

1 Imran F. Vakil, Esq. (Bar No. 248859)
ivakil@nexiolaw.com
2 NEXIO, PC
245 Fischer Avenue
3 Suite C3
Costa Mesa, CA 92626
4 Phone: (949) 478-6830
Facsimile: (949) 478-1275

5 Joseph A Dunne, Esq. (Pro Hac Vice)
JD@liebowitzlawfirm.com
6 LIEBOWITZ LAW FIRM, PLLC
11 Sunrise Plaza, Suite 301
7 Valley Stream, New York 11580
T. 516-233-1660

8 *Attorneys for Plaintiff, Al Pereira*

9 Mark D. Brutzkus - Bar No. 128102
10 Jeffrey A. Kobulnick - Bar No. 228299
Michael A. Bernet - Bar No. 306657
11 BRUTZKUS GUBNER
21650 Oxnard Street, Suite 500
12 Woodland Hills, CA 91367
Telephone: (818) 827-9000
13 Facsimile: (818) 827-9099
Email: mbrutzkus@bg.law
14 jkobulnick@bg.law
mbernet@bg.law

15 *Attorneys for Defendant, 3072541 CANADA INC.*

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 AL PEREIRA

19 Plaintiff,

20 v.

21 3072541 CANADA, INC; AND DOES
22 1-10 INCLUSIVE

23 Canada, Inc..

Docket No. 2:18-CV-2622-
RGK-JCx
**JOINT REPORT ON
EARLY MEETING OF
THE PARTIES**

24
25 Pursuant to Federal Rule of Civil Procedure 26(f), L.R. 26-1, Plaintiff Al Pereira.
26 (“Pereira”) and Defendant 307254 Canada, Inc. (“Canada, Inc.”), by and through
27 their respective counsel, hereby submit this Joint Report on Early Meeting of Parties
28

1 after having met and conferred pursuant to Fed. R. Civ. Proc., Rule 26(f) on October
2 27, 2016 and thereafter.

3 **I. JURISDICTION**

4 This Court has original jurisdiction over Pereira's copyright infringement
5 claim pursuant to 17 U.S.C. § 101, *et seq.*

6 **II. FACTS**

7 This is an action for copyright infringement arising from Canada, Inc.'s sale
8 of a single t-shirt containing a photograph of American rappers Tupac Shukar,
9 Notorious B.I.G and Redman, which Pereira recently registered with the U.S.
10 Copyright Office as reg. no. VA 2-065-045. Canada, Inc. denies Pereira's
11 allegations of infringement, and specifically contends that the t-shirt containing the
12 photograph was a vintage t-shirt that already had the photograph at issue on it at the
13 time that Canada, Inc. lawfully purchased it from a third party. Canada, Inc.
14 contends that its resale of the t-shirt is protected by the First Sale Doctrine, which
15 bars Plaintiff's claim for infringement.

16 **III. LEGAL ISSUES**

17 Pereira asserts that Canada, Inc.'s actions constitute copyright infringement,
18 and that as a result, Pereira is entitled to its own actual damages plus disgorgement
19 of Canada, Inc.'s profits attributable to the alleged infringement. It is undisputed
20 that Pereira cannot elect to recover statutory damages or seek recovery of his
21 attorneys' fees under 17 U.S.C. § 412 because Pereira did not register his copyright
22 until after the alleged infringement occurred.

23 Canada, Inc. contends that even if Pereira succeeds on his copyright
24 infringement claim (which Canada, Inc. does not concede), Pereira's monetary
25 recovery would be limited to Canada, Inc.'s net profits from the sale of the one t-
26 shirt at issue, plus a reasonable royalty fee that would have likely been negotiated
27 between a willing buyer and a willing seller for the photograph at issue as used on
28 one shirt. Pereira, however, contends that he should also be entitled to recover from

1 Canada, Inc. any profits that it made from sales of the other products that are not at
2 issue in this case, which Pereira contends were indirectly increased through the
3 publicity and controversy surrounding the sale of the one t-shirt at issue in this case.
4

5 **RULE 26(f)(3) ISSUES ADDRESSED AT THE RULE 26 CONFERENCE**

6 **A. 26(f)(3)(A) – Disclosures Under Rule 26(a)**

7 **(i) Initial Disclosures**

8 The parties agree exchange Initial Disclosures on or before September 11,
9 2018, as set forth below in Section III below.

10 **(ii) Expert Disclosures**

11 The parties shall exchange initial and rebuttal expert disclosures pursuant to
12 Rule 26(a) on all issues on which they bear the burden of proof according to the
13 schedule in Section III below.

14 The parties agree that at the time expert disclosures are served, each party
15 shall produce the information required by Federal Rule of Civil Procedure 26(a)(2).
16 The parties agree that they will not be required to produce draft expert reports or
17 disclosures or communications between counsel and experts in accordance with
18 Federal Rules of Civil Procedure 26(b)(4)(B) and (C), except as provided for in
19 Federal Rule of Civil Procedure 26(b)(4)(C)(i)-(iii).

20 **B. 26(f)(3)(B) – Scope of Discovery**

21 The parties expect to conduct discovery on the following subjects: (1)
22 whether Canada, Inc. have infringed Pereira's copyrights; (2) the amount of
23 damages, if any, that would be sufficient to compensate Pereira for any infringement
24 that has occurred by Canada, Inc.; (3) whether Pereira is entitled to injunctive relief;
25 and (4) whether Pereira's claims are barred or limited based on Canada, Inc.'s
26 affirmative defenses.

27 The parties do not believe that discovery should be conducted in phases or be
28 limited to or focused on particular issues.

1 The parties believe that discovery should be completed in accordance with the
2 proposed case schedule in section III below.

3 **C. 26(f)(3)(C) – Disclosure, Discovery, and ESI Preservation**

4 For purposes of the discovery of electronically stored information (“ESI”), the
5 parties agree to be governed by the Federal Rules of Civil Procedure. The parties
6 shall cooperate to identify the proper custodians, proper search terms, and proper
7 time frame for ESI.

8 **D. 26(f)(3)(D) – Privilege Or Protection Of Trial Preparation Material**

9 **(i) Treatment Of Privileged and Trial-Preparation Materials**

10 Federal Rule of Civil Procedure 26(b)(5) and a future Protective Order will
11 govern the treatment and handling of privileged and trial-preparation materials. No
12 party will be required to put on the privilege log documents that chronicle
13 communications between the parties and their respective counsel if such documents
14 were generated after the filing of the Complaint, except opinions of counsel and any
15 documents for which there is a subject matter waiver with respect to infringement,
16 validity, or enforceability upon which the party intends to rely at trial.

17 **(ii) Protective Order**

18 The parties agree to file a Proposed Protective Order on or before September
19 14, 2018 that shall govern discovery in this case.

20 **E. 26(f)(3)(E) - Changes In Limits on Discovery and Other**
21 **Limitations**

22 **(i) Limitations on Discovery**

23 The parties do not currently anticipate the need for any changes to the limits
24 on discovery set forth in the Federal Rules of Civil Procedure, or this Court’s Local
25 Rules, absent a showing of good cause and except as set forth below:

26 1. The parties shall identify all corporate representatives designated to
27 testify on behalf of the corporation pursuant to Fed. R. Civ. P. 30(b)(6) at least ten
28 (10) business days prior to the deposition provided it was noticed at least 30 days in

advance. If there is a request for documents associated with such deposition, the producing party shall use best efforts to produce any responsive documents not already produced no later than ten (10) business days prior to the deposition.

2. Any party which receives documents from a third-party pursuant to a subpoena will immediately reproduce those documents to the other party, at the other party's expense. Where immediate reproduction of documents is not possible, the party which received the documents will provide immediate notice to the other party and the issue will be resolved by the parties on a case-by-case basis.

F. 26(f)(3)(F) – Other Orders The Court Should Issue

The parties submit below a proposed partially agreed case schedule, identifying the areas for which the parties were unable to reach agreement.

The parties expect a Proposed Protective Order that shall govern discovery and the use of discoverable materials in this case.

IV. [PROPOSED] CASE SCHEDULE

The parties, through counsel, having conferred in person and by telephone in accordance with Fed. R. Civ. P., Rule 26(f), propose the following agreed schedule for the Court's consideration:

Event	Agreed Upon Deadlines	Plaintiff's Proposed Deadlines	Defendant's Proposed Deadline
Motions to Add Parties or to Amend Pleadings		October 29, 2018	September 17, 2018
ADR completion		October 29, 2018	March 11, 2019
Close of Fact Discovery		January 25, 2019	January 25, 2019
Opening Expert Reports and Disclosure of Advice of Counsel	30 days after close of discovery		January 26, 2019
Rebuttal Expert Reports	30 days after service of opening expert reports		February 25, 2019

Event	Agreed Upon Deadlines	Plaintiff's Proposed Deadlines	Defendant's Proposed Deadline
Close of Expert Discovery	45 days after service of the rebuttal expert reports		March 11, 2019
Deadline for Filing Dispositive Motions	30 days after Close of Expert Discovery or August 21, 2017		March 25, 2019
Final Pretrial Conference / Hearing on Motions in Limine	To be scheduled at the Court's convenience 60 days prior to Trial		May 7, 2019
Jury Trial			July 9, 2019

V. LOCAL RULE 26-1 REQUIREMENTS

a. **Complex Cases:** The parties do not believe that the Manual for Complex Litigation should be used for this action.

b. **Motion Schedule:** The parties agree that the deadline for filing dispositive motions is as indicated in the table above in Section III unless otherwise directed by the Court.

c. **ADR:** Plaintiff requests ADR Choice No. 3: private mediation. Defendant requests ADR Choice No. 1: that the assigned magistrate judge in this case be the mediator. Such mediation shall take place no later than the ADR deadline as indicated in the table above in Section III.

d. **Trial Estimate:** The parties currently anticipate that they will be prepared to begin trial on July 9, 2019, or any date thereafter when the Court is available, and expect that the trial in this matter will take two to three (2-3) days. The parties request a trial by jury.

e. **Additional Parties:** None anticipated at this time.

f. **Expert Witnesses:** The parties agree to the expert discovery schedule as indicated in the table above in Section III.

DATED: September 4, 2018

Respectfully Submitted,

LIEBOWITZ LAW FIRM, PLLC

By: /s/ Joseph A. Dunne
Joseph A Dunne, Esq. (Pro Hac Vice)
JD@liebowitzlawfirm.com
11 Sunrise Plaza, Suite 301
Valley Stream, New York 11580
T. 516-233-1660

Imran F. Vakil, Esq. (Bar No. 248859)
ivakil@nexiolaw.com
NEXIO, PC
245 Fischer Avenue
Suite C3
Costa Mesa, CA 92626
Phone: (949) 478-6830
Facsimile: (949) 478-1275
Attorneys for Plaintiff, Al Pereira

BRUTZKUS GUBNER

By: /S/ Jeffrey A. Kobulnick
Mark D. Brutzkus
Jeffrey A. Kobulnick
Michael A. Bernet
Attorneys For Defendant,
3072541 Canada Inc.